

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ROBERT JOSEPH MCCARTY,
Plaintiff,
v.
JOHN V. ROOS, et al.,
Defendants.

2:11-CV-1538 JCM (RJJ)

ORDER

15 Presently before the court is defendants Charlene Hoerth, et. al.’s (“state defendants”) motion
16 to dismiss. (Doc. #10). *Pro se* plaintiff Robert Joseph McCarty filed an opposition. (Doc. #12).
17 State defendants then filed a reply. (Doc. #15). Additionally, plaintiff filed a motion for partial
18 summary judgment. (Doc. #13). State defendants filed an opposition. (Doc. #16). Also before the
19 court is defendant United States of America’s (“federal defendant”) notice of failure to comply with
20 Federal Rule of Civil Procedure 4(i)(1). (Doc. #23). After state defendants’ motion to dismiss was
21 fully briefed, plaintiff filed two motions “for final determination by court to assert personal
22 jurisdiction for federal defendants, or in the alternative, to provide mandated service.” (Docs. #21
23 and #27). Finally, plaintiff filed a motion for sanctions. (Doc. #39).

24 On November 15, 2011, the magistrate held a hearing in which plaintiff's application for
25 leave to proceed in forma pauperis was granted. (Doc. #6). The magistrate also ordered plaintiff to
26 file an amended complaint by December 16, 2011. (Doc. #6). However, after granting plaintiff
27 pauperis status, the magistrate did not order the United States marshal to effect service pursuant to

1 Federal Rule of Civil Procedure 4(c)(3). *See* FED. R. CIV. P. 4(c)(3) (stating that the “court must
 2 [order that service be made by a United States marshal or deputy marshal] if the plaintiff is
 3 authorized to proceed in forma pauperis under 28 U.S.C. § 1915”).

4 In the absence of a Rule 4(c)(3) order to the United States marshal to effect service, *pro se*
 5 plaintiff filed procedurally deficient certificates of service. (Doc. #9). Accordingly, state defendants
 6 filed the instant motion to dismiss, arguing lack of personal jurisdiction and insufficient service of
 7 process. (Doc. #10). State defendants also opposed plaintiff’s motion for partial summary judgment,
 8 stating that, due to the deficient service, this court does not have jurisdiction. (Doc. #16). Similarly,
 9 federal defendant’s notice states that it declines to file an answer to the complaint because it has not
 10 been served pursuant to Federal Rule of Civil Procedure 4(i)(1). (Doc. #23).

11 On April 4, 2012, the magistrate ordered the clerk of the court to issue summons to the
 12 named defendants and deliver the summons to the United States Marshal for service. (Doc. #31).
 13 The clerk issued the summons on April 5, 2012. (Doc. #35).

14 Accordingly,

15 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that state defendants’ motion
 16 to dismiss (doc. #10) be, and the same hereby is, DENIED as moot, without prejudice to being re-
 17 filed once service has been effected.

18 IT IS FURTHER ORDERED that *pro se* plaintiff Robert Joseph McCarty’s motion for
 19 partial summary judgment (doc. #13) be, and the same hereby is, DENIED as moot, without
 20 prejudice to being re-filed once service has been effected.

21 IT IS FURTHER ORDERED that plaintiff’s motions “for final determination by court to
 22 assert personal jurisdiction for federal defendants, or in the alternative, to provide mandated service”
 23 (docs. #21 and #27) be, and the same hereby are, DENIED as moot.

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1 IT IS FURTHER ORDERED that plaintiff's motion for sanctions (doc. #39) be, and the same
2 hereby is DENIED as moot.

3 DATED April 17, 2012.

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5 *James C. Mahan*
6 **UNITED STATES DISTRICT JUDGE**
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